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COMMITTEE AGAINST TORTURE

Twenty-fifth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 452nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 22 November 2000, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.452/Add.1.

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GE.00-46272 (E)

The public part of the meeting was called to order at 10 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Discussion on the establishment of a pre-sessional working group on article 22

1. The CHAIRMAN introduced Ms. Lattuada, Chief of Budget, for an update on the Committee's request for the establishment of a pre-sessional working group to deal particularly with communications under article 22, which evidently had budgetary implications that would determine the outcome of the request.

2. Ms. LATTUADA presented an oral statement, supported by a written statement (OS/CAT/NOV/2000), in accordance with rule 25 of the Committee's rules of procedure.

3. It would be recalled that, at its 437th meeting, held on 18 May 2000, the Committee against Torture had agreed that the establishment of a pre-sessional working group would facilitate its monitoring activities, in particular its consideration of individual communications received under article 22 of the Convention. As indicated in paragraph 20 of its annual report, contained in document A/55/44, the Committee had agreed to pursue the matter at its twenty-fifth session.

4. Should the Committee at the current session decide to pursue the establishment of the above-mentioned pre-sessional working group as from the biennium 2002-2003, that would entail: (i) the convening of a five-day session of the working group, preceding each session of the Committee, with interpretation provided in two working languages; (ii) a conference room with full facilities; (iii) a maximum of 30 pages of in-session documentation for each session; and (iv) the payment of daily subsistence allowance of four members of the Committee for a period of seven days per session.

5. A preliminary estimate of the cited requirements at full cost amounted to $178,900 for the whole biennium. That figure could be broken down into $154,300 under section 2, total conference servicing costs of four sessions of the working group (five working days each), and $24,600 under section 22, for 28 days daily subsistence of four Committee members.

6. The estimates for conference services were based on the theoretical assumption that it would not be possible to provide the services required by the Committee from the existing conference capacity of the Organization. However, it should be noted that the extent to which the Organization's permanent capacity would need to be supplemented by temporary assistance resources could be determined only in the light of the calendar of conferences and meetings for the biennium 2002-2003. The proposed budget for that biennium was currently under preparation and would include provisions for conference services reflecting the pattern of meetings and conferences held in previous years. As a result, it was not anticipated that the decision by the Committee would require additional resources in the proposed programme budget for the biennium 2002-2003.

7. The decision of recommending the establishment of the pre-sessional working group would entail additional resources under section 22, Human rights, estimated at $24,600 for the biennium 2002-2003 for the payment of daily subsistence allowance to the members of the pre-sessional working group of the Committee.

8. She added that the latter sum was not included in the existing budget. By the time the budget for 2002-2003 had been processed and approved, it would also be clear whether or not the General Assembly would entertain the Committee's decision to hold pre-sessional working groups. If the General Assembly approved it, the necessary provisions would be made in the budget at that time.

9. The CHAIRMAN thanked Ms. Lattuada for her clear explanation, and asked Committee members whether they had any comments or queries.

10. Mr. MAVROMMATIS wondered where the requirements had been drawn from. He felt they were rather maximalist. The pre-sessional working group could be made up of three, not four, members, and would probably not require a whole week each time. Moreover, one pre-sessional working group each year could be held during the two-week meeting which prepared the other two meetings. The Committee had, after all, managed without the working group in the past.

11. The CHAIRMAN replied that the content of the request had reflected the decisions of the floor at the Committee's discussions in May. It would certainly be possible to revise those estimates downwards once the working group had been established, but if they did so beforehand they might end up with too little for their needs. The secretariat had been very responsive to the Committee's request, having taken it forward as soon as it was put to them. Two years would be needed for the request to complete its passage through the system, and alterations at the current stage might slow the process down.

12. Ms. GAER asked the secretariat to clarify whether such working groups were included among the programmes in the green booklet appealing for voluntary funds, which included contributions to treaty bodies.

13. Mr. BRUNI (Secretary of the Committee) explained that working groups were not included among those appeals. The publication, the second annual appeal and the annual plan of action had just been launched by the High Commissioner to encourage the provision of voluntary funds by States.

14. The CHAIRMAN thanked Ms. Lattuada for her update.

The public part of the meeting was suspended at 10.15 a.m. and resumed at 11.55 a.m.

Discussion of the situation in the Occupied Palestinian Territory in the light of article 16 of the Convention

15. The CHAIRMAN invited Mr. El Masry, who had raised the question of the situation in the Occupied Palestinian Territory as a matter of urgency, to introduce the topic.

16. Mr. EL MASRY said that during the previous 7 weeks, more than 230 Palestinians, one third of them children, had been killed by the Israeli security forces. There were strong indications that young people were being targeted, since almost all young victims had been killed by shots to the head or chest. The security forces were using excessive force against Palestinian demonstrators in clear violation of United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which required such officials to minimize damage and injuries, to respect and preserve human life, to ensure that firearms were used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm. Israel was actually maximizing damage and injury and showing no respect for human life. It was using weapons that were not designed for policing violent demonstrations but for use in combat situations, such as tanks, artillery, helicopter gunships and even warships. The disproportionate and indiscriminate use of force and collective punishment through the demolition of houses and closures of the Occupied Palestinian Territory clearly constituted serious violations of human rights as well as cruel, inhuman and degrading treatment and punishment within the meaning of article 16 of the Convention.

17. According to a report by Amnesty International dated 5 November 2000, impunity for those who committed human rights violations and the failure to investigate the many deaths at the hands of the security forces had led to a breakdown in the rule of law. On 5 October 2000, one week after the outbreak of the demonstrations, Amnesty International had sent two delegates to investigate the situation, a staff member and a former British police officer who had specialized in public order policing. In the light of their findings, Amnesty International had expressed concern that the Israeli security forces had repeatedly resorted to excessive lethal force, leading to unlawful killings, in circumstances in which the lives of the security forces and others were not in imminent danger. The security forces had also allegedly impeded the access of the wounded to medical assistance in a number of cases.

18. The normal code of conduct for dealing with violent demonstrations called for the use, at the outset, of non-lethal methods of control, followed by the firing of warning shots. If the demonstrators still failed to disperse, the next step was to fire at the legs and not at the chest or head. On 15 November, a member of the Israeli Parliament, the Knesset, Ms. Tamar Gojanski, had stated that the Israeli Government was carrying out a premeditated policy of killing five Palestinians a day and injuring many more.

19. As the events he had described were occurring while the Committee was in session, he felt it was his duty to bring up the matter. The least the Committee could do would be to ask Israel to respond to the allegations contained in the Amnesty International report, to take immediate action to ensure that its security forces complied with international standards governing the conduct of law enforcement officials, to bring to justice all persons responsible for unlawful killings and to pay compensation to the families of the victims.

20. Ms. GAER said that the concerns raised by Mr. El Masry were based largely on information provided by Amnesty International. But a large number of organizations had conducted preliminary investigations and come to different conclusions, presenting a more complex picture and indicating that there were problems, abuses, mistakes and provocations on all sides. The allegations by the various parties had been discussed in political bodies. Humanitarian vehicles had allegedly been misused. Issues such as insufficient regard for human

life, the use of excessive force, collective punishment and the use of children had all been addressed in detail. The High Commissioner for Human rights had spoken of the problems on both sides. Amnesty International had, to her knowledge, referred specifically to torture in only one case, namely the torture, mutilation and killing of two Israeli officials in a police station.

21. It was important for the Committee to maintain its traditional approach to matters of concern under the Convention. She questioned the appropriateness of addressing such matters in an emergency situation arising from a conflict. Moreover, the work of other bodies should not be duplicated. The Committee should preserve its impartiality, professionalism, balance and transparency and avoid politicization. The United Nations Secretary-General had played a role in addressing the current situation in the Middle East; the High Commissioner for Human Rights had conducted an investigation; a fact-finding mission had been created at the Sharm el-Sheikh summit of 17 October 2000 and other forms of official action had been taken. She failed to see what appropriate contribution the Committee could make in that context.

22. Stressing the need for procedural fairness and due process, she queried the appropriateness of requesting a special report under article 19 of the Convention. The article 20 procedure was triggered only by allegations of systematic torture. If article 16 was cited as offering grounds for requesting a report, it could be argued that reports could also be demanded for violations of other articles such as the failure of States parties to investigate cases of torture, to prosecute or extradite torturers or to provide remedies for complainants. The country in question was in a state of conflict. The Committee's practice had been to refrain from taking action during a conflagration. For example, it had suspended its inquiry into the situation in Yugoslavia during the Kosovo conflict. She wondered whether the Committee had anything useful to contribute by intervening at that juncture. It should give priority to its other obligations under the Convention.

23. The Committee should also be prepared to take a balanced view of such issues, considering information from both sides that presented existing concerns in a fair and appropriate way. The United Nations Secretary-General had publicly criticized the appearance of bias in United Nations resolutions dealing with Israel. He had said in recent weeks that language could also constitute violence and had expressed the hope that the international community would weigh its words carefully, because words could inflame or sooth.

24. Had the Committee considered, moreover, that it might set a precedent by addressing situations of armed conflict? She proposed that it should await Israel's next periodic report and treat it with no less procedural fairness than other States parties to the Convention.

25. Mr. CAMARA drew the Committee's attention to Commission on Human Rights resolution 2000/6 on the question of the violation of human rights in the occupied Arab territories, including Palestine, which condemned the continued violations of human rights in the Occupied Palestinian Territory, including East Jerusalem, in particular the continuation of acts of wounding and killing perpetrated by Israeli soldiers and settlers against Palestinians, in addition to the detention of thousands of Palestinians without trial. It further condemned the use of torture against Palestinians during interrogation, as it constituted a grave breach of the principles of international humanitarian law and the Convention against Torture, and called upon the Government of Israel to put an end immediately to the use of such practices. It requested the

Secretary-General to bring the resolution to the attention, inter alia, of the Government concerned and of the competent United Nations bodies. When the Commission on Human Rights, a body with a very broad mandate, referred to the use of torture, could the Committee afford to remain silent? When the Committee had learned some time previously of the Israeli Supreme Court ruling to the effect that torture was permissible under certain circumstances, it had initiated a dialogue with the State party. It was also duty bound to address the concerns expressed in the present context regarding possible violations of the Convention.

26. Mr. MAVROMMATIS said that he appreciated the reasons that had led Mr. El Masry to bring the matter to the Committee's attention. Innocent lives had been lost, and there appeared to be general agreement that excessive force was being used. His sympathy went to the victims on both sides. The Committee should seek guidance from Commission on Human Rights resolution 2000/6, which decided to establish a human rights inquiry commission to report to the Commission in April 2001, to ask the High Commissioner for Human Rights to conduct an investigation on the spot and to request a number of special rapporteurs, including the Special Rapporteur on the question of torture, to look into the situation and report to the General Assembly. The Committee should not take any decision until it had that additional, impartial information on whether torture was involved. He agreed with Ms. Gaer that the Committee should take care not to appear to politicize.

27. Mr. GONZÁLEZ POBLETE said that the Commission on Human Rights was a political body, whereas the Committee against Torture was a technical one, and its members were independent experts. The Convention did not empower the Committee to take action in the current situation. The Committee could not consider a document presented by Amnesty International under the article 22 procedure, because Israel had not made the declaration under that provision. Furthermore, there was a question of whether Israel should be asked to report on the Supreme Court decision allowing the use of force by the security services to obtain statements. The Committee had examined that possibility, but that had been regarded as follow-up, since, when the Committee had considered Israel's report, it had criticized the report for justifying the decision allowing Israeli security forces to apply "moderate physical pressure", to use the euphemism, during investigations of acts of terrorism. Accordingly, the Committee could not take any action, since the situation came under neither article 22 nor article 19; nor did the Committee have sufficient information to determine whether it was dealing with the article 20 procedure. However, it should be in a position to consider what room for manoeuvre it had.

28. Mr. YU Mengjia said that the Committee was currently witnessing an alarming escalation of the conflict in the Middle East, which was fraught with grave consequences. Mr. El Masry had referred to the excessive use of lethal force. There already seemed to be sufficient information available. The Commission on Human Rights resolution to which Mr. Camara had referred specifically mentioned the issue of torture, which of course was within the Committee's purview. He therefore did not think it was excessive to ask the Israeli authorities to respond to the allegations and to take suitable measures in conformity with the Convention.

29. Mr. YAKOVLEV noted that the High Commissioner for Human Rights had stressed that the route to all protection of human rights lay through the conclusion of a just and durable peace,

that the future of Palestine would depend largely on the ability of both communities to put aside thoughts of revenge and that all parties must refrain from words or actions that would exacerbate the current dangerous and sensitive situation. The Committee's decision should be taken in that light. In the current difficult situation, the Committee's actions and words should serve to bring the parties together and not to antagonize them further, thereby jeopardizing prospects for a real peace. He agreed with the general thrust of the High Commissioner's appeal.

30. Mr. RASMUSSEN said that he fully sympathized with Mr. El Masry's desire to do something in response to the terrible situation. But Mr. González Poblete's point was well taken: it was not clear that it was in the Committee's mandate to do what was being proposed. Moreover, the Committee should treat all States parties equally. Awful things were currently occurring in many countries, but the Committee did not have the power to monitor the situation all over the world simultaneously. If the Committee took action in the current case, it might be accused of not having done so in other countries where similar or even worse things were happening. But if it decided to react in every case, it would need to do so on a permanent basis, and that was not possible, because it was in session only five weeks a year. If another urgent matter requiring action were to come up in December, the Committee would open itself to criticism for not taking action in what might be an even worse case.

31. Mr. EL MASRY, responding to members' comments, said first that, while many sources could confirm the facts, he had quoted Amnesty International because it was regarded by the Committee as a very reliable, unbiased source. He could also cite the member of the mission sent by the European Union, who had spoken of 150 families who had lost their homes after a heavy artillery bombardment. The High Commissioner had an office in Gaza; unfortunately, Israel refused to receive any United Nations representative. In her statement to the Commission on Human Rights, the High Commissioner had concluded that in their attempts to disperse Palestinian demonstrators, the Israeli military authorities had used live ammunition, rubber-coated steel bullets and tear gas, and that the majority of Palestinian casualties had reportedly been to the upper part of the body, including eye injuries sustained through the firing of rubber bullets. He did not understand the Committee's reluctance about Israel, given the very severe violations of human rights and ill-treatment of the Palestinian people.

32. He took issue with Ms. Gaer's description of the events in Palestine as armed conflict. On the one side, there was an occupying power that had confined the Palestinians to 22 per cent of the land, which it had further divided by establishing settlements and building highways; on the other side, there were mere demonstrators. The occupying power was responsible for the safety of the people in the occupied territories. What was occurring was not armed conflict, but the use of brute force in dealing with demonstrations in violation of international law. The Committee was merely asking the State party to respond to the allegations. It was all the more pertinent to raise the issue in the Committee since Israel disregarded all United Nations political bodies, whereas it was legally required to respond to the Committee. If the Committee simply expressed its concerns and asked Israel to respond, it would have an opportunity to consider the situation at its May 2001 session.

33. As for Mr. Rasmussen's point, it just happened that the situation under discussion was taking place at the current time, but if a similar situation arose between sessions, the Committee

could ask the State party to respond at its following session. He thought that that was within the Committee's mandate. The credibility of the treaty-monitoring bodies was at stake: how could the Committee not ask the State party a simple question when, every evening, television reports showed bulldozers demolishing houses of relatives of suspects?

34. Mr. RASMUSSEN wondered what Mr. El Masry's reaction would be if he were asked why, at its May 2000 session, the Committee had not taken up the question of the situation in Chechnya or requested the Russian Federation to explain what was happening there.

35. Mr. CAMARA said that as the Commission on Human Rights had concluded that torture was taking place systematically, the Committee could hardly close the current session without taking any action.

36. The CHAIRMAN said he thought the issues and differences of opinion in the Committee were quite clear. The Committee needed to take a decision. Israel was due to report to the Committee at the May 2001 session. He shared the view expressed by Mr. Mavrommatis: the Committee might be accused of political interference, because it was engaging in a discussion with very few of the facts in front of it.

37. He noted that Mr. El Masry was in fact proposing a motion to the effect that the Committee request from Israel an additional report pursuant to article 19 describing the current conditions in the occupied Arab territories and how their military response in subduing public disorder did not breach article 16 of the Committee. As there did not appear to be a consensus, the Committee would need to vote on Mr. El Masry's motion.

38. Mr. EL MASRY said that he wished to point out as an additional piece of information that the Commission on Human Rights resolution had expressed grave concern at the widespread, systematic and gross violation of human rights perpetrated by the Israeli occupying power, in particular mass killings and collective punishment.

39. The CHAIRMAN recalled that the Commission on Human Rights was not a body of experts, nor was it a body which made objective findings of fact in the way the treaty-monitoring bodies did.

40. Mr. EL MASRY noted that a similar situation had arisen with regard to Egypt, whose report had been due: the Committee had received information requiring a response, and it had sought an additional report, but had decided that since the report had been due two months later, it had asked the State party to include information on that matter therein. The Committee could do the same in the current case.

41. The CHAIRMAN said that another possibility was for the Committee to raise the question once it had received the information.

42. Mr. MAVROMMATIS, speaking on a point of order, moved that the discussion be postponed until the next session.

43. Mr. RASMUSSEN and Mr. YAKOVLEV seconded the motion.

44. The CHAIRMAN noted that any motion to postpone took precedence over any substantive motion.

45. Ms. GAER asked for the motion to be put to a vote.

46. The motion to postpone the discussion of the question until the session of May 2001 was adopted by 7 votes to 1.

The meeting rose at 1 p.m.